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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/915,216	07/25/2001	Christoph Berger	ADI-074 (257/40)	5641

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EXAMINER

STASHICK, ANTHONY D

ART UNIT	PAPER NUMBER
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3728

DATE MAILED: 07/02/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/915,216

Applicant(s)

BERGER ET AL.

Examiner

Anthony D Stashick

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-- The MAILING DATE of this communication appears on the cover sheet with the corresponding address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 July 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 9, 10.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-12, 17-18, 20 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Polycarpe 6,041,518 in view of Castro 5,699,627 and Valiant 896,488. Polycarpe '518 discloses a boot with openings (slots and holes 9) in the sole, support layer 20 and insole 15 with the openings overlapping (see Figure 4). The openings in the insole are distributed over the entire sole and are of generally circular shape. With respect to the size of the openings, it appears that those located along the periphery of the insole are of smaller size than those in the interior of the shoe. The support layer 20 is resistant to compression and is rigid (see col. 3, lines 31-40) and would control the deformation properties of the shoe since the others layers are less rigid. The support layer 20 extends at least along the heel region or ball region of the sole with openings in the toe and heel regions. The openings located in the middle section of the insole form a grill pattern as they are formed in rows. The outsole layer extends along the heel and ball region (full outsole) and the openings in the outsole are located in the toe and arch region of the outsole. The sole comprises a cushioning layer (top portion of the sole) and a tread layer (that portion which contacts the ground with an upper shown attached to the sole in Figure 5. Polycarpe '518 does not disclose the at least one third opening being through the sole, the first openings being interconnected or having a channel on the bottom side of the top layer connecting

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the openings, or the first openings being smaller than the second openings. Castro '627 teaches that a ventilated cushioned shoe can have multiple openings in multiple layers, as shown in Figure 1. The first openings located in 20 being smaller than the second openings (second openings are slits in 43) with the second openings making a grill pattern. Castro '627 also teaches that the outer sole can have a third opening that overlaps the other openings to allow for ventilation of the shoe through the sole. Therefore, it would have been obvious, to make the openings of the shoe of Polycarpe '518, line up as taught by Castro '627 and have a through hole through the outer sole to allow for better ventilation of the shoe during use. Valiant '488 teaches that the openings in the insole of a shoe can be interconnected by channels c' which aid in distributing air throughout the shoe for better ventilation. Therefore, it would have been obvious, to one of ordinary skill in the art at the time the invention was made, to interconnect the openings of the insole of Polycarpe '518, as taught by Valiant '488, to better control the flow of air in the shoe and to distribute it throughout the shoe sole.

3. Claims 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 1 above in view of Cintron 5,675,914. The references as applied to claim 1 above disclose all the limitations of the claims except for the support layer having a support element disposed in the arch area and enclosing the arch area. Cintron '914 teaches that a support layer for a multilayered shoe can have a support element (sidewall 44) located thereon that connects the forefoot and rearfoot portions of the layer while giving needed support to the arch of the user's foot. This sidewall encompasses the wearer's foot in at least the arch area as it envelops the user's arch to support it during use. Therefore, it would have been obvious to make the support layer of the references as applied to claim 1 above with a sidewall, as taught by

Cintron '914, to aid in supporting the arch of the user and also allow for ventilation of the arch of the user.

4. Claims 15-16 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 1 above in view of Foley et al. 5,319,866. The references as applied to claim 1 above disclose all the limitations of the claims except for the outsole comprising multiple elements including forefoot and heel elements. Foley et al. '866 teaches that the outsole of a shoe can be made of multiple elements including a forefoot element 26 and rearfoot element 28 (see Figure 6) as well as an arch element 24. This allows for better flexion of the shoe sole with respect to the natural flexion of the user's foot. Therefore, it would have been obvious to make the sole of the references as applied to claim 1 above out of multiple elements, as taught by Foley et al. '866, to allow for better flexion of the shoe with the natural flexion of the user's foot.

5. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 1 above in view of Moretti 5,992,052. The references as applied to claim 1 above disclose all the limitations of the claim except for a membrane located between the support layer and the insole. Moretti '052 teaches that a membrane 18 can be located between a "support" layer 19 and an insole 17 to prevent unwanted fluid from entering the shoe through the holes in the sole. Therefore, it would have been obvious to place a membrane, such as that shown in Moretti '052, in the shoe of the reference as applied to claim 1 above, to prevent any fluid that may have built up in the sole of the shoe from contacting the insole and user's foot.

6. Claims 23-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 22 above in view of Burt 6,401,364. The references as applied to

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claim 22 above disclose all the limitations of the claims except for the upper being made of mesh material located in the heel of the upper and a climate control sock that is made of two layers of mesh material and reinforced. Burt '364 teaches that the upper attached to a shoe can be made of two layers of mesh material outer layer 20 and internal layer 40 (see col. 4, lines 35-60) with a reinforcement layer 30 located in between. This arrangement allows for the user's feet to breathe while located within the shoe and prevents sweating of the user's foot. With respect to claims 25 and 26 and the sock, it appears that since the shoe of Burt '364 would include a sock in the upper (see col. 4, lines 35-60) and the invention of Burt '364 is to allow the foot to breathe while in the shoe, the idea applied to the upper of the shoe could also be applied to the sock used in the shoe for the same reasons. Therefore, it would have been obvious to make the upper and/or sock of the references as applied to claim 22 above out of layered mesh material that is reinforced, as taught by Burt '364, to allow for the user's foot to breathe while located within the shoe and protect the user's foot from abrasions as well as cushion the foot within the shoe.

Response to Arguments

7. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection. Applicant's arguments that the examiner does not give a reason to combine any of the references in all of the rejections are not clearly understood. As has been well settled, the reason to combine references can come from the references themselves or from the knowledge of one of ordinary skill in the art. The reason to combine the references has been given, at least, in the last sentence of each of the rejections set forth above.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Telephone inquiries regarding the status of applications or other general questions, by persons entitled to the information, "should be directed to the group clerical personnel and not to the examiners. In as much as the official records and applications are located in the clerical section of the examining groups, the clerical personnel can readily provide status information without contacting the examiners", M.P.E.P. 203.08. The Group clerical receptionist number is (703) 308-1148.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers or other general questions should be directed to Tech Center 3700 Customer Service at (703) 872-9301, email CustomerService3700@uspto.gov.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony D Stashick whose telephone number is 703-308-3876. The examiner can normally be reached on Tuesday through Friday from 8:30 am until 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 703-308-2672. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

Other helpful telephone numbers are listed for applicant's benefit.

Allowed Files & Publication	(703) 305-8322
Assignment Branch	(703) 308-9287
Certificates of Correction	(703) 305-8309
Drawing Corrections/Draftsman	(703) 305-8404/8335
Fee Increase Questions	(703) 305-5125
Intellectual Property Questions	(703) 305-8217
Petitions/Special Programs	(703) 305-9282
Terminal Disclaimers	(703) 305-8408
Informal Fax for 3728	(703) 308-7769

If the information desired is not provided above, or has been changed, please do not call the examiner (this is the latest information provided to him) but the general information help line below.

Information Help line	1-800-786-9199
Internet PTO-Home Page	http://www.uspto.gov/



Anthony D Stashick
Primary Examiner
Art Unit 3728

ADS
June 26, 2003